

AMENDED IN SENATE MARCH 31, 2005

SENATE BILL

No. 945

Introduced by Senator Soto

February 22, 2005

An act to amend Sections 120975, 120980, 121015, 121025, 121075, 121085, and 121125 of, and to add Section 121342 to, the Health and Safety Code, relating to HIV testing.

LEGISLATIVE COUNSEL'S DIGEST

SB 945, as amended, Soto. HIV testing.

~~Existing law authorizes the State Department of Health Services, through its Office of AIDS and the authorized agents of the office, to participate in a rapid human immunodeficiency virus test research program conducted with the federal Centers for Disease Control and Prevention.~~

~~This bill would declare the Legislature's intent to enact legislation to require the department to collect HIV test results, for epidemiological purposes only, in a manner that satisfies the federal Centers for Disease Control and Prevention's need to ensure maximum accuracy of the data.~~

(1) Existing law requires each county designated by the Director of Health Services to make the test for the presence of antibodies to the probable causative agent of AIDS available on a confidential basis at an alternative test site through use of a coded system with no linking of individual identity with the test request or results. Existing law prohibits the county and anyone else administering the test at an alternative test site to ask for the name, social security number, or any other information that could reveal the identity of the individual who takes the test.

Notwithstanding any other provision of law or regulation, this bill would require health care providers and laboratories to report cases

of HIV infection to the local health officer using the patient's name. The bill would require local health officers to report unduplicated HIV cases by name to the department. By imposing new duties on a county, this bill would impose a state-mandated local program.

(2) Existing law provides privacy protections for individuals who are the subject of blood testing for antibodies to the probable causative agent of AIDS.

This bill would instead specify that those privacy protections apply to individuals who are tested for HIV.

(3) Existing law provides for civil or criminal penalties for any person who negligently or willfully discloses results of an HIV test to any 3rd-party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, with exceptions. However, existing law specifies that these provisions impose no sanction for disclosure of an HIV test in accordance with any reporting requirement for a diagnosed case of AIDS by the department or the Centers for Disease Control and Prevention under the United States Public Health Service.

This bill would additionally provide that these provisions do not impose any sanction for disclosure of an HIV test in accordance with any reporting requirement for a diagnosed case of HIV by the department or the Centers for Disease Control and Prevention under the United States Public Health Service.

(4) Existing law prohibits a physician and surgeon from disclosing any identifying information about a patient under his or her care who has tested positive for infection by the probable causative agent of AIDS.

This bill would change references to "the probable causative agent of AIDS" to "HIV" and would prohibit a physician and surgeon from disclosing any identifying information about that infected patient to any entity other than the county health officer.

(5) Existing law refers to "the test for the antibody to the probable causative agent for AIDS."

This bill would change those references to "the test for the antibody to HIV" or "the test for HIV." The bill would make other conforming changes.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature intends to enact legislation in~~
2 ~~subsequent amendments to require the State Department of~~
3 ~~Health Services to collect HIV test results, for epidemiological~~
4 ~~purposes only, in a manner that satisfies the federal Centers for~~
5 ~~Disease Control and Prevention's need to ensure maximum~~
6 ~~accuracy of the data.~~

7 *SECTION 1. The Legislature intends that this act accomplish*
8 *all of the following:*

- 9 *(a) Ensure current knowledge of the HIV/AIDS epidemic.*
- 10 *(b) Improve planning and allocation of resources to areas of*
11 *greatest need.*
- 12 *(c) Enhance competitiveness for federal HIV funding from the*
13 *Ryan White Comprehensive AIDS Resources Emergency (CARE)*
14 *Act. Funding formulae in the CARE Act are expected to be based*
15 *on HIV, rather than AIDS, cases as early as 2007.*
- 16 *(d) Maintain anonymous HIV testing sites.*
- 17 *(e) Preserve services and treatment for those with HIV/AIDS*
18 *by preventing the loss of federal funding.*

19 *SEC. 2. Section 120975 of the Health and Safety Code is*
20 *amended to read:*

21 120975. To protect the privacy of individuals who are ~~the~~
22 ~~subject of blood testing for antibodies to the probable causative~~
23 ~~agent of acquired immune deficiency syndrome (AIDS) tested~~
24 ~~for HIV~~, the following shall apply:

25 Except as provided in Section 1603.1 ~~or~~, 1603.3, as amended
26 by Chapter 23 of the Statutes of 1985, *or 121342*, no person shall
27 be compelled in any state, county, city, or other local civil,
28 criminal, administrative, legislative, or other proceedings to
29 identify or provide identifying characteristics that would identify
30 any individual who is the subject of a blood test to detect
31 antibodies to ~~the probable causative agent of AIDS HIV~~.

1 *SEC. 3. Section 120980 of the Health and Safety Code is*
2 *amended to read:*

3 120980. (a) Any person who negligently discloses results of
4 an HIV test, as defined in Section 120775, to any third party, in a
5 manner that identifies or provides identifying characteristics of
6 the person to whom the test results apply, except pursuant to a
7 written authorization, as described in subdivision (g), or except
8 as provided in Section 1603.1 or 1603.3 or any other statute that
9 expressly provides an exemption to this section, shall be assessed
10 a civil penalty in an amount not to exceed one thousand dollars
11 (\$1,000) plus court costs, as determined by the court, which
12 penalty and costs shall be paid to the subject of the test.

13 (b) Any person who willfully discloses the results of an HIV
14 test, as defined in Section 120775, to any third party, in a manner
15 that identifies or provides identifying characteristics of the
16 person to whom the test results apply, except pursuant to a
17 written authorization, as described in subdivision (g), or except
18 as provided in Section 1603.1 or 1603.3 or any other statute that
19 expressly provides an exemption to this section, shall be assessed
20 a civil penalty in an amount not less than one thousand dollars
21 (\$1,000) and not more than five thousand dollars (\$5,000) plus
22 court costs, as determined by the court, which penalty and costs
23 shall be paid to the subject of the test.

24 (c) Any person who willfully or negligently discloses the
25 results of an HIV test, as defined in Section 120775, to a third
26 party, in a manner that identifies or provides identifying
27 characteristics of the person to whom the test results apply,
28 except pursuant to a written authorization, as described in
29 subdivision (g), or except as provided in Section 1603.1 or
30 1603.3 or any other statute that expressly provides an exemption
31 to this section, that results in economic, bodily, or psychological
32 harm to the subject of the test, is guilty of a misdemeanor,
33 punishable by imprisonment in the county jail for a period not to
34 exceed one year or a fine of not to exceed ten thousand dollars
35 (\$10,000) or both.

36 (d) Any person who commits any act described in subdivision
37 (a) or (b) shall be liable to the subject for all actual damages,
38 including damages for economic, bodily, or psychological harm
39 that is a proximate result of the act.

1 (e) Each disclosure made in violation of this chapter is a
2 separate and actionable offense.

3 (f) Except as provided in Article 6.9 (commencing with
4 Section 799) of Chapter 1 of Part 2 of Division 1 of the Insurance
5 Code, the results of an HIV test, as defined in Section 120775,
6 that identifies or provides identifying characteristics of the
7 person to whom the test results apply, shall not be used in any
8 instance for the determination of insurability or suitability for
9 employment.

10 (g) “Written authorization,” as used in this section, applies
11 only to the disclosure of test results by a person responsible for
12 the care and treatment of the person subject to the test. Written
13 authorization is required for each separate disclosure of the test
14 results, and shall include to whom the disclosure would be made.

15 (h) Nothing in this section limits or expands the right of an
16 injured subject to recover damages under any other applicable
17 law. Nothing in this section shall impose civil liability or
18 criminal sanction for disclosure of the results of tests performed
19 on cadavers to public health authorities or tissue banks.

20 (i) Nothing in this section imposes liability or criminal
21 sanction for disclosure of an HIV test, as defined in Section
22 120775, in accordance with any reporting requirement for a
23 diagnosed case of *HIV infection, including a diagnosed case of*
24 *AIDS*, by the department or the Centers for Disease Control *and*
25 *Prevention* under the United States Public Health Service.

26 (j) The department may require blood banks and plasma
27 centers to submit monthly reports summarizing statistical data
28 concerning the results of tests to detect the presence of viral
29 hepatitis and HIV. This statistical summary shall not include the
30 identity of individual donors or identifying characteristics that
31 would identify individual donors.

32 (k) “Disclosed,” as used in this section, means to disclose,
33 release, transfer, disseminate, or otherwise communicate all or
34 any part of any record orally, in writing, or by electronic means
35 to any person or entity.

36 (l) When the results of an HIV test, as defined in Section
37 120775, are included in the medical record of the patient who is
38 the subject of the test, the inclusion is not a disclosure for
39 purposes of this section.

1 *SEC. 4. Section 121015 of the Health and Safety Code is*
2 *amended to read:*

3 121015. (a) Notwithstanding Section 120980 or any other
4 provision of law, no physician and surgeon who has the results of
5 a confirmed positive test to detect *HIV* infection ~~by the probable~~
6 ~~causative agent of acquired immune deficiency syndrome~~ of a
7 patient under his or her care shall be held criminally or civilly
8 liable for disclosing to a person reasonably believed to be the
9 spouse, or to a person reasonably believed to be a sexual partner
10 or a person with whom the patient has shared the use of
11 hypodermic needles, or to the county health officer, that the
12 patient has tested positive on a test to detect *HIV* infection ~~by the~~
13 ~~probable causative agent of acquired immune deficiency~~
14 ~~syndrome~~, except that no physician and surgeon shall disclose *to*
15 *any entity other than the county health officer* any identifying
16 information about the individual believed to be infected.

17 (b) No physician and surgeon shall disclose the information
18 described in subdivision (a) unless he or she has first discussed
19 the test results with the patient and has offered the patient
20 appropriate educational and psychological counseling, that shall
21 include information on the risks of transmitting the human
22 immunodeficiency virus to other people and methods of avoiding
23 those risks, and has attempted to obtain the patient's voluntary
24 consent for notification of his or her contacts. The physician and
25 surgeon shall notify the patient of his or her intent to notify the
26 patient's contacts prior to any notification. When the information
27 is disclosed to a person reasonably believed to be a spouse, or to
28 a person reasonably believed to be a sexual partner, or a person
29 with whom the patient has shared the use of hypodermic needles,
30 the physician and surgeon shall refer that person for appropriate
31 care, counseling, and followup. This section shall not apply to
32 disclosures made other than for the purpose of diagnosis, care,
33 and treatment of persons notified pursuant to this section, or for
34 the purpose of interrupting the chain of transmission.

35 (c) This section is permissive on the part of the attending
36 physician, and all requirements and other authorization for the
37 disclosure of test results to detect *HIV* infection ~~by the probable~~
38 ~~causative agent of acquired immune deficiency syndrome~~ are
39 limited to the provisions contained in this chapter, Chapter 10
40 (commencing with Section 121075), and Sections *121342*,

1 1603.1, and 1603.3. No physician has a duty to notify any person
2 of the fact that a patient is reasonably believed to be infected by
3 ~~the probable causative agent of acquired immune deficiency~~
4 ~~syndrome with HIV, except as required in current law.~~

5 (d) The county health officer may alert any persons reasonably
6 believed to be a spouse, sexual partner, or partner of shared
7 needles of an individual who has tested positive on ~~a test to~~
8 ~~detect infection by the probable causative agent of acquired~~
9 ~~immune deficiency syndrome~~ *an HIV test* about their exposure,
10 without disclosing any identifying information about the
11 individual believed to be infected or the physician making the
12 report, and shall refer any person to whom a disclosure is made
13 pursuant to this subdivision for appropriate care and followup.
14 Upon completion of the county health officer's efforts to contact
15 any person pursuant to this subdivision, all records regarding that
16 person maintained by the county health officer pursuant to this
17 subdivision, including but not limited to any individual
18 identifying information, shall be expunged by the county health
19 officer. *Any record of the HIV test associated with any reporting*
20 *requirement for a diagnosed case of HIV infection, including a*
21 *diagnosed case of AIDS, shall be maintained as required by*
22 *existing law.*

23 (e) The county health officer shall keep confidential the
24 identity and the seropositivity status of the individual tested and
25 the identities of the persons contacted, as long as records of
26 contacts are maintained.

27 (f) Except as provided in Section 1603.1 or 1603.3, no person
28 shall be compelled in any state, county, city, or local civil,
29 criminal, administrative, legislative, or other proceedings to
30 identify or provide identifying characteristics that would identify
31 any individual reported or person contacted pursuant to this
32 section.

33 *SEC. 5. Section 121025 of the Health and Safety Code is*
34 *amended to read:*

35 121025. (a) Public health records relating to ~~acquired~~
36 ~~immune deficiency syndrome (AIDS)~~ *HIV or AIDS*, containing
37 personally identifying information, that were developed or
38 acquired by state or local public health agencies shall be
39 confidential and shall not be disclosed, except as otherwise
40 provided by law for public health purposes or pursuant to a

1 written authorization by the person who is the subject of the
2 record or by his or her guardian or conservator.

3 (b) State or local public health agencies may disclose
4 personally identifying information in public health records, as
5 described in subdivision (a), to other local, state, or federal public
6 health agencies or to corroborating medical researchers, when the
7 confidential information is necessary to carry out the duties of
8 the agency or researcher in the investigation, control, or
9 surveillance of disease, as determined by the state or local public
10 health agency.

11 (c) Any disclosure authorized by subdivision (a) or (b) shall
12 include only the information necessary for the purpose of that
13 disclosure and shall be made only upon agreement that the
14 information will be kept confidential and will not be further
15 disclosed without written authorization, as described in
16 subdivision (a).

17 (d) No confidential public health record, as described in
18 subdivision (a), shall be disclosed, discoverable, or compelled to
19 be produced in any civil, criminal, administrative, or other
20 proceeding.

21 (e) Any person who willfully or maliciously discloses the
22 content of any confidential public health record, as described in
23 subdivision (a), to any third party, except pursuant to a written
24 authorization, as described in subdivision (a), or as otherwise
25 authorized by law, shall be subject to a civil penalty in an amount
26 not less than one thousand dollars (\$1,000) and not more than
27 five thousand dollars (\$5,000) plus court costs, as determined by
28 the court, which penalty and costs shall be paid to the person
29 whose record was disclosed.

30 (f) In the event that a public health record, as described in
31 subdivision (a), is disclosed, the information shall not be used to
32 determine employability, or insurability of any person.

33 *SEC. 6. Section 121075 of the Health and Safety Code is*
34 *amended to read:*

35 121075. Research records, in a personally identifying form,
36 developed or acquired by any person in the course of conducting
37 research or a research study relating to ~~Acquired Immune~~
38 ~~Deficiency Syndrome (AIDS)~~ *HIV or AIDS* shall be confidential,
39 and these confidential research records shall not be disclosed by
40 any person in possession of the research record, nor shall these

1 confidential research records be discoverable, nor shall any
2 person be compelled to produce any confidential research record,
3 except as provided by this chapter.

4 *SEC. 7. Section 121085 of the Health and Safety Code is*
5 *amended to read:*

6 121085. (a) Confidential research records shall be protected
7 in the course of conducting financial audits or program
8 evaluations, and audit personnel shall not directly or indirectly
9 identify any individual research subject in any report of a
10 financial audit or program evaluation. To the extent it is
11 necessary for audit personnel to know the identity of individual
12 research subjects, authorized disclosure of confidential research
13 records shall be made on a case-by-case basis, and every prudent
14 effort shall be exercised to safeguard the confidentiality of these
15 research records in accordance with this chapter. Information
16 disclosed for audit or evaluation purposes should be used only
17 for audit and evaluation purposes and may not be redisclosed or
18 used in any other way.

19 (b) Nothing in this section imposes liability or criminal
20 sanction for disclosure of confidential research records in
21 accordance with any reporting requirement for a *case of HIV,*
22 *including a* diagnosed case of AIDS by the department or the
23 Centers for Disease Control *and Prevention* under the United
24 States Public Health Services.

25 *SEC. 8. Section 121125 of the Health and Safety Code is*
26 *amended to read:*

27 121125. For purposes of this chapter:

28 (a) “AIDS” means ~~Acquired Immune Deficiency Syndrome~~
29 *acquired immunodeficiency syndrome.*

30 (b) “Disclosed” means to disclose, release, transfer,
31 disseminate, or otherwise communicate all or any part of any
32 confidential research record orally, in writing, or by electronic
33 means to any person or entity, or to provide the means for
34 obtaining the records.

35 (c) “Confidential research record or records” means any data
36 in a personally identifying form, including name, social security
37 number, address, employer, or other information that could,
38 directly or indirectly, in part or in sum, lead to the identification
39 of the individual research subject, developed or acquired by any

1 person in the course of conducting research or a research study
2 relating to AIDS.

3 (d) “HIV” means human immunodeficiency virus.

4 SEC. 9. Section 121342 is added to the Health and Safety
5 Code, to read:

6 121342. (a) Notwithstanding any other provision of law or
7 regulation, to ensure knowledge of current trends in the HIV
8 epidemic and ensure that California remains competitive for
9 federal funding, cases of HIV infection shall be reported by
10 health care providers and laboratories to the local health officer
11 using the patient’s name. Local health officers shall report
12 unduplicated HIV cases by name to the department.

13 (b) Nothing in this section shall be construed to do any of the
14 following:

15 (1) Authorize any person to use the HIV test result for
16 purposes other than reporting the test result to local and state
17 public health officials, except as otherwise provided by law.

18 (2) Authorize any person to disclose an HIV test result with
19 identifying information to any agent of the federal government,
20 except as otherwise provided by law.

21 (3) Interfere with the availability of anonymous testing as
22 authorized by law.

23 SEC. 10. If the Commission on State Mandates determines
24 that this act contains costs mandated by the state, reimbursement
25 to local agencies and school districts for those costs shall be
26 made pursuant to Part 7 (commencing with Section 17500) of
27 Division 4 of Title 2 of the Government Code.